

**MINUTES**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
August 22, 2011 at 6:00 P.M.

**MEMBERS PRESENT:** Larry Willis, Chairman; Scott Dowers, Don Mottley, Terry Dayvolt, Tina Baxter and Judy Writsel.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Christy Powell, Staff.

**MEMBERS ABSENT:** Mike Winge, Vice Chairman.

Roll call was taken and a quorum declared present.

**PLEDGE OF ALLEGIANCE** A moment of silence was held followed by the Pledge of Allegiance.

**MINUTES:** Upon a motion made by Don Mottley and seconded by Scott Dowers, the Minutes of the last regular meeting held June 27, 2011, were approved as circulated. Upon a motion made by Terry Dayvolt and seconded by Tina Baxter, the Minutes of July 25, 2011 stating there was no July business to hold a meeting were approved as circulated.

The Chairman explained the Rules of Procedure to the audience. He stated the Warrick County School Corporation has several items on the agenda that will be taken all at one time but they will have to be voted on individually.

**SPECIAL USES:**

**BZA-SU-11-14**

**APPLICANT:** Warrick County School Corporation by Mark Neff, Attorney at Law

**OWNER:** Vicki S. Tevault

**PREMISES:** Property located on the N side of SR 68 approximately 2.4 miles W of the intersection formed by Hwy 68 and Hwy 61. Hart Twp. 5422 SR 68. Part of PR 1 and PR 2 in the Vicki Sue Tevault Exempt Division.

**NATURE OF CASE:** Applicant requests a Special Use (SU-15) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a school in an "A" Agriculture Zoning District. The property is to be used for athletic fields and athletic facilities for the students of Tecumseh Junior Senior High School. *(Complete legal on file.)* Advertised in the Boonville Standard August 11, 2011

**BZA-SU-11-15**

**APPLICANT:** Warrick County School Corporation by Mark Neff, Attorney at Law

**OWNER:** Kirk and Stacy Tevault

**PREMISES:** Property located on the N side of Hwy 68 approximately 2.4 miles W of the intersection formed by Hwy 68 and Hwy 61. Hart Twp. 5400 W SR 68. Part of PR 1 in the Vicki Sue Tevault Exempt Division.

**NATURE OF CASE:** Applicant requests a Special Use (SU-15) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a school in an "A" Agriculture Zoning District. The property is to be used for athletic fields and athletic facilities for the students of Tecumseh Junior Senior High School. *(Complete legal on file.) Advertised in the Boonville Standard August 11, 2011*

#### **BZA-SU-11-16**

**APPLICANT:** Warrick County School Corporation by Mark Neff, Attorney at Law

**OWNER:** Reba Holder Life Estate, Kathy Wildt, and Jan Riddle

**PREMISES:** Property located on the N side of Hwy 68 approximately 2.4 miles W of the intersection formed by Hwy 68 and Hwy 61. Hart Twp. 5466 W SR 68.

**NATURE OF CASE:** Applicant requests a Special Use (SU-15) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a school in an "A" Agriculture Zoning District. The property is to be used for athletic fields and athletic facilities for the students of Tecumseh Junior Senior High School. *(Complete legal on file.) Advertised in the Boonville Standard August 11, 2011*

#### **BZA-SU-11-17**

**APPLICANT and OWNER:** Warrick County School Corporation by Mark Neff, Attorney at Law

**PREMISES:** Property located on the N side of Hwy 68 approximately 2.4 miles W of the intersection formed by Hwy 68 and Hwy 61. Hart Twp. 5544 W SR 68.

**NATURE OF CASE:** Applicant requests a Special Use (SU-15) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a school in an "A" Agriculture Zoning District. The property is to be used for athletic fields and athletic facilities for the students of Tecumseh Junior Senior High School. *(Complete legal on file.) Advertised in the Boonville Standard August 11, 2011.*

The Chairman asked if the applicants were present and for them to step to the podium.

Attorney Mark Neff approached the podium and stated he is the Attorney for the Warrick County School Corporation. He stated the owners are all present and he had them raise their hand as he called out their names and which applications they were associated with.

The Chairman stated to let the record show that for BZA-SU-11-14 Vicki Sue Tevault is present. The Chairman stated to let the record show that for BZA-SU-11-15 Kirk and Stacy Tevault are present.

The Chairman stated to let the record show that for BZA-SU-11-16 Reba Holder, Kathy Wildt and Jan Riddle is present.

The Chairman stated to let the record show that for BZA-SU-11-17 Brad Schneider, Superintendent Warrick County School Corporation is present.

The Chairman called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners. She stated the Chairman listed all the owners of each application and they are present. She stated the request is for a Special Use (SU 15) as stated the expansion of school facilities to be used as athletic fields and athletic facilities such as baseball fields, a football field with parking lots and tennis courts. She stated the surrounding property is all zoned "A" Agriculture with either vacant land or residences and the Junior / Senior High School. She stated there is no flood plain on the property. She stated SR 68 runs along the South side of the properties. She stated Richard Meyer with INDOT sent an email stating there is no issue with the special use of the school property itself, however with the added vehicular traffic that this project may produce it looks as if it will impact the transportation effects on SR 68 in that area. She continued he is discussing the issue further with Randy Archer at the Vincennes District office so any approval would be subject to them working out any conditions as needed with INDOT. She stated Feldmeier Rd. runs between the Holder's and WCSC property. She stated Robert Howard, County Engineer will need more information from the School Corporation if they plan to do any improving of the road or do any work in the Right of Way for access to the proposed fields. She stated that would have to go before the County Commissioners and the application would also be subject to that. She stated this property is currently under contract to be purchased by the WCSC pending the special use approval for the facilities and expansion of the school property. She stated they do have a letter from Lynnville Water and Sewer stating they have no problem with the expansion to move athletics to Tecumseh High School. She continued that the letter states the town has water and sewer available at the Tevault property for the expansion to hook into the existing lines. She stated the applicant has answered the proposed use questions in detail. She stated in #6, the applicant states: *The attached conceptual drawing by the architect may be re-configured over the years, depending upon enrollment, budget, schedules, needs, etc.* She stated if the Board approves this, they may want to add a condition in the approval that any minor changes to the plot plan may be reviewed and approved by the Executive Director of the Planning Commission if she feels comfortable with it. She stated or it could be that if anything changes it would have to come back before the Board. She stated that is something they would need to consider. She stated on planned unit development plans, if there are minor changes per the zoning ordinance, she can approve small changes to the plan, but if she doesn't feel comfortable with it, she brings it back to the Board. She stated other than that the application is in order and the Board has copies of the conceptual drawings in their packets.

The Chairman asked if Attorney Neff had anything to add.

Attorney Neff stated he thinks under the rules of this Board they have one year to begin construction and honestly they don't know if one year is going to begin it. He stated they know it definitely will not be completed within that time frame, so they ask if they can also make some exception to authorize a longer period of time to begin. He stated they could dig a hole, put in a foundation, do something but the bulk of this is going to be dependent upon budgets, state income, and state revenue so they need as much lead time as possible to acquire the permits and get the funding to do what they'd like to do in the future.

Mr. Willis asked how much time they would think they would need.

Mr. Schneider stated he doesn't have a perfect crystal ball to be able to tell the Board this but he would say they could be looking at a 3-5 year time period and again there are a lot of different variables that he cannot control, the least of which is the budget that they get from the State of Indiana each year. He stated there are other projects that they have going on, roof replacements, HVAC systems that are being replaced. He stated if one of them would come in at a much higher cost than they had anticipated, there is a possibility that this project could be delayed even past 5 years. He stated they don't foresee that and certainly hope that is not the case but he doesn't want to stand before this Board and tell them that within 3 years, the football field, track and baseball field are all going to be relocated because he can't tell them that. He stated he can tell the Board that they have a strong desire to move the facilities to the High School. He stated the biggest issue they have there is student safety that right now their high school students have to drive to Lynnville to practice football and baseball. He stated they've been very fortunate that they have not had any serious accidents but having all the facilities on the campus makes a lot of sense to them. He stated it is something they are committed to but again he's got a lot of different wants and needs throughout the County and to be honest, he's going to put academic needs, classroom space, HVAC etc. in front of athletics but this is something that the School Board and himself are committed to.

Mr. Willis stated to Mr. Schneider has been a good steward of County dollars and he appreciates that.

Attorney Neff stated the School Corporation bought 23 acres in an L shape about 11 years ago. He stated this newest purchase would allow them to fill in the L so it would be a perfect rectangle adjacent to the west side of the school. He stated it would be very easy then to organize and expand athletics westward and that is the intent.

Mr. Schneider stated to be honest if the time ever came where their population grew in the northern part of the district, they are considering moving to the middle school concept next year, if their population would grow and they could get to a point where they could sustain a standalone middle school, this property would also give them the opportunity to do so again and have all of their schools on one campus. He stated they are trying to look 15-20 years down the road. He stated he understands the one year limitation but they are trying to purchase the property and this is one of the steps they have to go through.

Attorney Neff stated the Board's consideration would be appreciated.

Mrs. Rector stated she researched the time frame for a Special Use and read from the Ordinance 'if the Special Use is abandoned for one year or has not been completely established within one year of the date granted the Special Use shall be null and void unless specified elsewhere in this article.' She stated she doesn't find on this type of Special Use that there are any other specifics.

The Chairman asked if the Attorney had any input.

Attorney Doll asked if they could build a tennis court or a parking space or something.

Attorney Neff stated they could do some ground work or some flattening, leveling.

Attorney Doll stated if they commence excavation...

Mr. Schneider stated the tennis courts will be complete within a year. He stated it is a very small part of this property but it is part of this property.

Mrs. Rector asked the Attorney to clarify what 'completely established' would mean.

Attorney Doll stated he doesn't think it is necessarily directed at the construction as much as the intended use.

Attorney Neff stated the intended use is for the benefit of the students.

Attorney Doll stated so as long as it is established for the intended use of the benefit of the school and the kids that are attending and some physical structure or excavation work commences within the time limitation he thinks it could be argued that they are progressing on it and it will be fine. He stated if it is deemed to be approved tonight and someone wants to add language to the motion that says that some step in that regard will be considered sufficient that would be further credence in the record of what the Board's intent is. He stated this Board may not be here 3 years from now; it could be a completely different Board. He stated any guidance they can leave the people that follow them would be helpful.

Attorney Neff stated it will help them try to establish a burden of proof for what they've done if it were in the minutes so they would appreciate that.

Mr. Willis asked if there were any questions by the Board.

Mr. Dayvolt asked if a middle school were to go in there, they might change the direction of this property and put the middle school there or are they going to keep this as an athletic field and put the middle school somewhere else.

Mr. Schneider stated if in 20 years the population grew and that need arose where they needed to build a standalone middle school they may have to use part of that property and possibly move the athletic facilities around on the property. He stated that would all depend on the final approval in their plans.

Attorney Neff stated that is in the long term but the immediate plans are athletic fields.

Mr. Schneider stated he hesitates to even mention the middle school but the purchase of this property allows for a lot of opportunity for expansion sometime in the future. He stated he will be long gone by that time but they are trying to think 20-25 years down the road and not tie a future school board's hands. He stated it may never happen but at least they will have some flexibility.

Mrs. Rector stated the Board is not approving that tonight.

Attorney Neff stated they are now 12 students shy of 10,000 students in Warrick County so population student body wise is increasing but that is subject to change.

Mr. Willis asked if there were any questions by the Board Members.

Mr. Mottley asked Mr. Schneider if the tennis courts could be completed. He asked Attorney Doll if the tennis courts were complete, if they could consider that as satisfying the present requirements of their ordinance.

Mr. Schnieder stated the tennis courts are currently under construction but there is also some parking that will be part of that and that will be located on this property they are seeking.

Mr. Willis asked if there were any remonstrators for or against this petition. There being none he asked if there were any other questions by Board Members. There being none he entertained a motion.

Mr. Willis entertained a motion for BZA-SU-11-14.

Don Mottley made a motion findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Federal, State, or Local permits being obtained.
2. Subject to any minor changes of the plot plan submitted being approved by the Executive Director of the Planning Commission.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

4. Subject to all public utility easements and facilities in place.
5. Subject to any requirements from Lynnville Water & Sewer.
6. Subject to any requirements deemed necessary from INDOT.
7. Subject to any requirements deemed necessary from The County Engineer.
8. Subject to the completion of any excavation or earth work , the construction of any tennis court or other athletic facilities or the construction of parking facilities within one year which shall be considered as full compliance with the one year development requirement within the Warrick County Comprehensive Zoning Ordinance.

Judy Writsel seconded and the motion carried.

Mr. Willis entertained a motion for BZA-SU-11-15.

Terry Dayvolt made a motion findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Federal, State, or Local permits being obtained.
2. Subject to any minor changes of the plot plan submitted being approved by the Executive Director of the Planning Commission.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all public utility easements and facilities in place.

5. Subject to any requirements from Lynnville Water & Sewer.
6. Subject to any requirements deemed necessary from INDOT.
7. Subject to any requirements deemed necessary from The County Engineer.
8. Subject to the completion of any excavation or earth work , the construction of any tennis court or other athletic facilities or the construction of parking facilities within one year which shall be considered as full compliance with the one year development requirement within the Warrick County Comprehensive Zoning Ordinance.

Tina Baxter seconded and the motion carried.

Mr. Willis entertained a motion for BZA-SU-11-16.

Judith Writsel made a motion findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Federal, State, or Local permits being obtained.
2. Subject to any minor changes of the plot plan submitted being approved by the Executive Director of the Planning Commission.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all public utility easements and facilities in place.
5. Subject to any requirements from Lynnville Water & Sewer.
6. Subject to any requirements deemed necessary from INDOT.



7. Subject to any requirements deemed necessary from The County Engineer.
8. Subject to the completion of any excavation or earth work , the construction of any tennis court or other athletic facilities or the construction of parking facilities within one year which shall be considered as full compliance with the one year development requirement within the Warrick County Comprehensive Zoning Ordinance.

Tina Baxter seconded and the motion carried.

### **BZA-SU-11-17**

Scott Dowers made a motion findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Federal, State, or Local permits being obtained.
2. Subject to any minor changes of the plot plan submitted being approved by the Executive Director of the Planning Commission.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all public utility easements and facilities in place.
5. Subject to any requirements from Lynnville Water & Sewer.
6. Subject to any requirements deemed necessary from INDOT.
7. Subject to any requirements deemed necessary from The County Engineer.

8. Subject to the completion of any excavation or earth work , the construction of any tennis court or other athletic facilities or the construction of parking facilities within one year which shall be considered as full compliance with the one year development requirement within the Warrick County Comprehensive Zoning Ordinance.

Don Mottley seconded and the motion carried.

### **VARIANCE:**

#### **BZA-V-11-18**

**APPLICANT:** Force Design, Inc. by Charles Coyle, PLS

**OWNER:** North American Lighting, Inc. by Kirk Welter, P.E. Gen Mgr.

**PREMISES:** Property located on the S side of Industrial Park Drive approximately 700 feet E of the intersection formed by Industrial Park Drive and SR 57, Greer Twp. Lt 7 in North Warrick Industrial Park Sec 1. *11833 Industrial Park Drive.*

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a reduction in the required parking spaces of 70 by 9 (total of 61) in an “M-2” General Industrial Zoning District. *Advertised in the Boonville Standard August 11, 2011*

Charles Coyle approached the podium and stated he is a Land Surveyor Site Design Coordinator with Force Design at Columbus, IN.

Kirk Welter approached the podium and stated he is the General Manager of Manufacturing Engineering for North American Lighting.

Mr. Willis asked for a staff report from the Executive Director.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners. She stated this is a request for a reduction in parking spaces. She stated they would be required to have 70, they are asking for a reduction of 9 for a total of 61. She stated the ordinance requires 1space per 400 sq ft for the office and break room (5162 sq ft ~ 13 spaces) and 1 space per 500 sq ft for the manufacture and mechanical area (24,836 sq ft & 3,866 sq ft. requiring 57 spaces). She stated the surrounding properties are zoned “M-2” General Industrial and are in the Industrial Park except for the property to the South which is zoned “A” Agriculture and is vacant. She stated there is no flood plain on the property. She stated the access is Industrial Park Drive. She stated the Improvement Location Permit for this property was issued with the required amount of parking shown on the plat plan. She stated the owners needed to get construction underway so they went ahead and obtained their permit. She stated The Redevelopment Commission has submitted a letter stating they have no issue with the request and unanimously support the reduction in spaces. She stated as part of the application, the applicants go into detail why they are requesting the Variance and basically the hardship or the reason why. She asked the Attorney if she needed to read it into the record.

Attorney Doll stated no if it is file stamped it is part of the record.

Mrs. Rector stated the application is in order.

Mr. Coyle stated the manufacturing facility is high tech and has a lot of equipment without a lot of man power being required so because of the size of the facility they are able to do quite a bit more work with reduced man power. He stated the 43 employees is spread over 3 shifts so there very seldom will even 43 parking spaces be needed at any one time. He stated 61 spaces is generous if they have a company meeting and even invite some extra folks in. He stated given today's environment he thinks the one thing he would just mention to the Board, in lead standards, this is green technology and they are actually encouraged to reduce the number of parking spaces thus creating less heat being reflected from parking spaces and the one thing that sticks in his mind because they've all seen vacant parking spaces, they start to fall apart when they are not being used and there is no sense in building spaces that aren't going to be used. He stated certainly there are plans on this site to increase the size of the building which would increase the number of employees and at that time and place, this Board would have an opportunity to review that and take another look at it.

Mr. Willis stated they have substantial ground if they needed more parking spaces they could either make temporary spaces or permanent spaces.

Mr. Coyle stated on the site plan, to the west there is room to double the size of this parking lot.

Mr. Welter stated the way they've positioned the building and designed it, it will allow for doubling the size of the building in the future so they tried to set the parking so it was all east to west to be able to double the parking lot. He stated these extra 9 spaces go north and south and disrupt that flow so not only are they not necessary for the head count they will have but they also somewhat impede the expansion possibilities.

Mrs. Rector asked the Attorney if due to the type of business they are creating, the high tech aspect of it and small number of employees required to manufacture what they manufacture, if that could be the hardship for the Variance.

Attorney Doll stated he is looking at paragraph 3 of their standard resolution trying to figure out what the justification could be. He explained to the Applicant that the Board has to have a factual justification to grant a variance. He stated they are required to state that by Supreme Court opinions. He stated if they don't it is arbitrary and capricious. He stated there isn't anyone in the room tonight objecting obviously and it is doubtful any one is going to show up and file a writ of certiorari in the next 30 days but the Appellate Courts in Indiana have said in order to grant a Variance it has to be some unique aspect of the physical property itself that justifies it. He stated he is thinking of the appellate case where the homeowner had an irregularly shaped lot, wanted to build a room addition and the variance was granted and there was an appeal filed by a neighbor. He stated the Supreme Court said that is not good enough; make a smaller room instead of getting a Variance for the side yard setback requirements. He stated the unique nature of the building, he understands it but he is just not sure how they make it fit into Paragraph 3.

Mr. Coyle stated that many communities like his own have the requirement of square footage of office area but then in an industrial application it is based on the number of employees for the largest shift allowing for shift change.

Attorney Doll stated that is a great concept unfortunately they don't have it in their ordinance.

Mr. Coyle stated he sees that and he wrestled with this as he was putting it together. He stated if he could have found a very good reason as it is called for here he would have sure put it down. He stated they think it makes absolute economic sense.

Attorney Doll stated he is not saying it is not good for the environment, he's not say it is not economical, or that they need the extra nine spots given the nature of what is occurring in the facility but his only advice to the Board is that the only justification for the approval of the Variance is a site specific physical attribute of the property itself that makes it unworkable which hasn't been created by the applicant.

Mr. Mottley stated if they look at number 3 in their application, it says unnecessary pavement areas will only enhance these negative effects on the environment.

Attorney Doll asked isn't that true everywhere in every single parking lot in Warrick County.

Mr. Mottley stated yes but they haven't come before them.

Attorney Doll stated he knows and he is not trying to be unsympathetic but it says it has to be a condition peculiar to the property involved. He stated that is true in every single asphalt parking lot in the United States of America.

Mr. Coyle stated on the flip side if they had an application where it was very labor intensive, 70 spots may not be enough to adequately provide for everybody but if the only built 70 then they'd have people parking on the street or in the grass.

Attorney Doll stated these are minimums so if anyone knew they were going to have a hundred employees they would obviously need more parking spots. He stated the zoning laws only control the minimum amounts required. He stated if this Board can figure out something that defines it as a condition peculiar to this property, and that the peculiar condition constitutes a hardship unique to this property or so limited to such a small number of properties that it constitutes a marked exception to the properties in the neighborhood and can define it in this motion then it is a legal act.

Mr. Welter stated he is in charge of all tooling for the company and a lot of tooling is going to China and he is excited to be doing something here and the only way they can compete with China is to invest in technology and hire skilled engineers and they cannot compete on labor so the hope for manufacturing is the higher tech, lower people density manufacturing in the future. He stated it is higher skilled so the wages end up being the same but he thinks it is important that they don't compromise their ability to be cost competitive.

Mr. Dayvolt stated they understand that and they are trying to help them.

Mr. Willis stated that they had mentioned expanding the size of their physical structure and if they do these 9 spots impede the expansion.

Mr. Welter stated to the extent that their roof is not at a peak, they are sloped on one end so they can put the other half on in the future. He stated they've designed it to expand.

Mr. Dayvolt asked where the other parking spaces would go.

Mr. Welter stated they would just continue on to the west.

Attorney Doll stated where the 9 spots are.

Mr. Welter stated exactly, they would double those 4 rows.

Mrs. Writsel stated if these 9 spaces existed than their construction would make it complicated for them to expand the parking later so this would impede the ease with which they could expand the parking at a later date.

Attorney Doll asked if the 9 spots could be incorporated in the expanded parking. He stated to change the line configurations instead of making them north to south, to make them go east and west and the parking lot is just enlarged to the west.

Mr. Coyle stated that would work except they've got 4 rows of parking and 4 doesn't divide into 9 very well.

Mrs. Writsel stated the one row is next to the building and it cannot be expanded anyway but the top three could possibly be.

Attorney Doll stated he is not unsympathetic to their request, he is worried about the legality of approving it if it isn't unique to the site and the precedent they are creating the next time a great idea comes in the room and wants a Variance but there isn't anything unique to the site to justify it.

Mr. Dowers asked what constitutes a parking space. He asked could they put a motorcycle parking on that edge.

Mrs. Rector stated they have to be at least 180 square feet; 9 x 18.

Mrs. Writsel asked if it has to be paved.

Mrs. Rector stated no.

Mrs. Writsel stated they could just spread gravel on that area.

Mrs. Rector stated yes, they could show it on their plot plan and park on the grass. She stated there are business parking lots located in residential districts, there are limitations on them, they have to be paved. She stated but otherwise, when they get out of the residential areas, they have no set requirements except for the size of a parking space.

Attorney Doll stated to the applicant if they understand that they don't have to asphalt this parking lot.

Mr. Coyle stated they do because it is under contract but yes they understand.

Mr. Willis stated they could take these 9 spots and show them someplace else on the plan and leave them as grass.

Attorney Doll stated as long as there is not a disruptive curb.

Mr. Willis stated as long as they don't build anything in there and disturb where they are going to be.

Mr. Coyle asked for clarification that he could show the parking spots right where they are and it still remains grass.

Mr. Dowers stated just to declare it as overflow parking.

Mr. Willis stated the parking space doesn't have to be paved or used.

Attorney Doll stated he wouldn't block them by a curb.

Mr. Willis stated he would leave them open edged so they could pull in there if they needed to or if a fire truck needed to stage in there at the present time or something they would have the availability of those 9 spots.

Mr. Coyle asked for clarification that it can be grass.

Mr. Willis stated as he understands in the ordinance it can be grass.

Attorney Doll stated that is correct, they have no surfacing requirement in that zoning designation.

Mrs. Rector stated except in Residential Zoning.

Mr. Coyle asked if when they get done with this project and it is inspected and they have grass they will be okay.

Attorney Doll stated yes and they will have the minutes taken tonight from this Board meeting to support the fact that that's exactly what they've been told.

Mr. Willis stated they should keep a copy of the minutes with their building permit so they can show the inspector if they have a problem.

Mrs. Rector stated there won't be anyone inspecting the parking.

Mrs. Writsel stated to be sure they don't put a curb along there so they don't lose access to it.

Mr. Willis stated they appreciate them coming to Warrick County and creating jobs and they want to work with them as much as possible and they have pointed something out here, because of the high-tech nature of their business, that they have they may have to address this for the like industries. He stated but he doesn't think they need to be here for this Board to rule on anything, he thinks they can leave the parking spaces as grass as long as they are designated on this drawing.

Mrs. Rector asked if they needed a letter to that extent.

Mr. Coyle stated yes. He stated that doesn't make a lot of sense to him and that is kind of his niche as a Site Designer and Land Surveyor.

Mrs. Rector stated there are some companies that come in and they'll just show all parking in the green space. She stated they have no idea if it remains grass or if they bring in gravel, they just have to make sure there's enough area shown for the number they need. She stated she does think the ordinance should have some regulations about green space and gravel or paving requirements for parking personally but it is not questioned in the ordinance.

Attorney Doll asked if they wish to proceed with their variance request or would they like to withdraw it based upon the conversation and the fact that forthcoming they will receive a letter from the Executive Director stating as long as there is space for 9 additional cars to park regardless of the surface and it is not curbed off they are in compliance with the requirements of the ordinance.

Mr. Coyle stated they will withdraw it.

Mr. Welter asked since they've withdrawn it then they haven't lost it.

Attorney Doll stated no they haven't lost anything.

Mr. Willis stated along with that letter, after they approve the minutes at their next meeting, they can have a copy of those as well for his records.

Attorney Doll stated to the Board that when they start approving these that are not property specific they have opened the flood gate that they don't know if they can deny anyone in the future that ever wants a variance or else they are subject to being accused of being arbitrary and capricious.

Mrs. Rector asked then how could they ever approve a Variance for a sign to be larger than the ordinance allows or for someone to live in their house while they build a new one. She stated if the Attorney is saying it has to be something peculiar to the piece of ground, then how can they ever do a Variance for anything except something that has a ditch or something running through the property that makes it a physical attribute peculiar to that particular property. She stated she thought a person could ask for a Variance on any regulation of the Zoning Ordinance.

Attorney Doll stated they can but the Supreme Court has held that the Variance has to be property specific. He continued it has to be occasioned by something unique to that site and it has to be something not man made or created by the Applicant. He stated for example, a property owner says he thinks his building would be prettier closer to the road so he's going to ask for a Variance from setback but he's got all the space in the world to put the building in the correct setback. He stated if someone would ever challenge the granting of that Variance they would lose. He stated the sign question has to do with the uniqueness of the property, if there is a hill or woods, a bend in the road, something that makes it unique to put a bigger sign up than the ordinance would have allowed, if there is a fact then the Variance would be proper.

Mrs. Rector stated like putting up an accessory building before the house.

Attorney Doll stated if someone comes in and talks about the fact that this is the only place the house will fit and this is how it goes and it is unique to the property and they locate it, is there a rural area vs. an urban area, then there are reasons like that that one might be able to put in paragraph 3 of the resolution approving it that would justify it. He stated and frankly there is a clause in paragraph 3 that talks about a small number of properties similarly situated and the question about building a new residence while they still have an old residence on the same lot, which is one of those applications that he has always thought met that small number of properties where that fact exists. He stated they probably have 2-3 dozen at any given time tops so he thinks that would be justifiable in the Court. He stated there wasn't anyone here tonight to object and it isn't that they thought they'd ever be challenged on this one, it is the door they are opening down the road when they turn one down, and then they are going to get sued and they are going to look at our records and go back through the minutes and say they want to see every Variance they've ever approved. He continued and they are going to ask what the unique property aspects were that caused them to approve this one or this one or that one. He stated and when they can't find one, the Board will be considered arbitrary and capricious and they will lose.

The Applicants thanked the Board and left the room.

Mrs. Rector stated she would like to clarify what a person can obtain a Variance for and what they can't. She stated because she told these two men standing here for days it has to be a hardship. She stated she told them she doesn't know how they can pass this Variance. She stated the contractor was going to file that Variance no matter what. She stated they told him all they had to do is show it just like they had it and not have to pave it or anything. She stated they got their permit but he wasn't satisfied, he wanted to file that Variance. She stated she needs to



know exactly what they can ask a Variance for because she doesn't want to waste people's time and money.

Attorney Doll stated anyone that wants their day in court can have it and that is basically what this body is. He stated this Board is the judicial branch of zoning law; they get to hear everyone's uniqueness and appeals. He stated that is why it is called the Board of Zoning Appeals and anyone that wants their day in court gets to have it. He stated it seems to him the question he has to ask is the common sense question the Board had in their gut when they heard this application. He continued and that is 'what is the uniqueness about the property that would justify the Variance.' He stated if someone brought the Board a triangular shape piece of property and they just couldn't fit those last nine parking spots on the land. He continued, they fully utilized the land and have every square inch of it accounted for appropriately and it's a great job and a great design but they are short 9 spots and it doesn't look like what they are going to be doing there requires the 9 cars in the parking lot on a daily basis then approve it. He stated it is unique to the land justified.

Mr. Willis asked if there was any further discussion. There being none he asked for other business.

**OTHER BUSINESS:**

None.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Being no other business Don Mottley made a motion to adjourn seconded by Terry Dayvolt and the meeting adjourned at 7:08 P.M.

---

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held August 22, 2011.

---

Sherri Rector, Executive Director